

MARGARET COVERT

IBLA 80-379

Decided September 15, 1980

Appeal from decision of Oregon State Office, Bureau of Land Management, holding Pioneer placer mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

APPEARANCES: Margaret Covert, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Margaret Covert appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 30, 1980, holding the Pioneer placer mining claim null and void.

BLM stated that appellant's assessment statement (proof of labor) was returned to her because the claim was not accompanied by the claim filing and was not previously filed for recordation with that office under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2.

In her statement of reasons appellant says that she thought that she did everything that was required in regard to the mining claim.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. The same section requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within 90 days after the date of location of such claim. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulations, 43 CFR 3833.1-2(a) and 43 CFR 3833.1-2(b) read as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal land, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed. \* \* \*

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate

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1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

There is no evidence in the file, other than appellant's assertion that she thought she had done everything that was required, to indicate that appellant did, in fact, file her notice of location for recordation with BLM.

The statutory and regulatory mining recordation requirements are mandatory and failure to comply with them must result in a finding that the claim is void. G. R. Marquardson, 49 IBLA 114 (1980); Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980); Walter T. Paul, 43 IBLA 119 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

